

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCRETIA A. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Bedford Park, IL

*Docket No. 02-1160; Submitted on the Record;
Issued February 12, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on October 4, 1999 causally related to her October 5, 1998 employment injury.

This is the second time this case has been before the Board. Appellant sustained a head injury on October 5, 1998. The Office of Workers' Compensation Programs accepted appellant's claim for contusion to the head, postconcussion syndrome and tension headaches. Appellant was off work until September 1, 1999, when she returned to light duty. On May 23, 2000 she filed notice of recurrence, alleging that on October 4, 1999 she had a recurrence of her October 5, 1998 injury. By decision dated August 24, 2000, the Office denied appellant's recurrence of disability claim on the grounds that she failed to establish that her claimed recurrent condition worsened due to her October 5, 1998 employment injury.

In a decision issued October 19, 2001,¹ the Board found that the case was not in posture for decision due to a conflict in the medical evidence. The Board therefore set aside the Office's May 22, 1997 decision and remanded the case to the Office for referral to a referee medical examiner to resolve the conflict in the medical evidence.

The Office scheduled appellant for a referee examination with Dr. Kevin J. Fagan, Board-certified in psychiatry and neurology. In a report dated January 29, 2002, Dr. Fagan stated findings on examination, reviewed the medical records and the statement of accepted facts and opined that appellant's claimed recurrence in October 1999 was definitely unrelated to something at work that would render her totally disabled. He advised that there was no objective evidence of totally disability due to cervical myofascial pain syndrome and severe depression, in the form of detailed neuropsychological testing, psychiatric evaluation or thorough neurological examination.

¹ Docket No. 01-254 (issued October 19, 2001).

By decision dated February 15, 2002, the Office denied appellant's claim for recurrence of disability sustained on October 4, 1999 causally related to her October 5, 1998 employment injury.

The Board finds that appellant did not meet her burden to establish that she sustained a recurrence of disability on October 4, 1999 causally related to her October 5, 1998 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In the instant case, the Office based its decision to deny appellant's claim for a recurrence of her employment-related disability on the January 29, 2002 report of Dr. Fagan, the independent medical examiner, to whom appellant was referred to resolve the conflict in the medical evidence. In his referee medical opinion, Dr. Fagan indicated that there was no objective evidence in the record to show that appellant was totally disabled as of October 4, 1999. He advised that the record contained no detailed neuropsychological testing, psychiatric evaluation or thorough neurological examination to support appellant's claimed headaches and depression. Therefore, Dr. Fagan opined that appellant's claimed October 1999 recurrence could not be attributed to anything at her employment that would cause her claimed total disability. The Office found that Dr. Fagan's opinion represented the weight of the evidence, which showed that there was no change in the nature and extent of appellant's injury-related condition as of October 4, 1999.

The Board finds that Dr. Fagan's referee opinion negating a causal relationship between appellant's claimed recurrence on October 4, 1999 and her accepted October 5, 1998 employment injury is sufficiently probative, rationalized, and based upon a proper factual background and is accorded special weight.³ In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. Therefore, appellant has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

² *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Gary R. Seiber*, 46 ECAB 215 (1994).

The decision of the Office of Workers' Compensation Programs dated February 15, 2002 is hereby affirmed.

Dated, Washington, DC
February 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member